

U.S. Bankruptcy Appellate Panel  
of the Ninth Circuit  
125 South Grand Avenue, Pasadena, California 91105  
Appeals from Central California (626) 229-7220  
Appeals from all other Districts (626) 229-7225

E-filing

FILED  
JUN 18 2007  
HARDY W. WICKING  
CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
PM 1:04

*[Handwritten signature]*

In Re: CONNECTIX CORPORATION

BAP No.: NC-07-1200

Bankruptcy No(s): 05-55648-MM

Adversary No(s):

C 07

3192

RMW

NOTICE OF TRANSFER OF APPEAL TO DISTRICT COURT

A party to the appeal has timely filed an objection to the disposition of this matter by the Bankruptcy Appellate Panel. See 28 USC Section 158. Consequently, this appeal is herewith transferred to SAN FRANCISCO DISTRICT COURT.

Please acknowledge receipt of the case file listed above by signing and returning a copy of this transmittal form.

Harold S. Marenus, BAP Clerk

By: Edwina Clay  
Deputy Clerk

Date: June 11, 2007

Please acknowledge receipt of  
the case file listed above.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_  
District Court Deputy

Assigned District Court No.  
\_\_\_\_\_

cc: Bankruptcy Court  
All Parties

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIAOFFICE OF THE CLERK  
280 South First Street, Room 3035  
San Jose, CA 95113-3099

E-filing

FILED

MAY 21 2007

CLERK  
United States Bankruptcy Court  
San Jose, California

## TRANSMITTAL FORM

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

C 07

3192 RMW

TO: Bankruptcy Appellate Panel of the Ninth Circuit, 125 S. Grand Avenue, Pasadena, CA, 91105

BAR# NC-07-1200

CASE NAME: Connectix Corporation, a California corporation

BANKRUPTCY NO.: 05-55648 -MM

BANKRUPTCY CHAPTER: 7

BANKRUPTCY JUDGE: Morgan

DATE NOTICE OF APPEAL FILED: 5/17/2007

DATE OF ENTRY OF ISSUE: 5/10/2007

DATE BANKRUPTCY FILED: 9/9/2005

NOTICE OF OBJECTION FILED:

DATE OF TRANSMITTAL: 5/21/2007

RECEIVED  
Harold S. Marenus, Clerk  
U.S. BKCY APP PANEL  
OF THE NINTH CIRCUIT

MAY 23 2007

FILED

DOCKETED

DATE

INITIAL

PLEASE STAMP YOUR CASE NUMBER on a copy of this transmittal form and return the copy to the bankruptcy court.

  
 Deputy Clerk

①

JAMES A. TIEMSTRA (Bar No. 96203)  
LAW OFFICES OF JAMES A. TIEMSTRA  
Tribune Tower  
409 Thirteenth Street, 15th Floor  
Oakland, CA 94612  
Telephone No. (510) 987-8000  
Facsimile No. (510) 987-8001  
E-mail: jat@tiemlaw.com

RECEIVED  
Harold S. Marquis, Clerk  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

JUN 11 2007

Attorney for Debtor-Appellee,  
CONNECTIX CORPORATION

FILED

DOCKETED

DATE

INITIAL

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re

CONNECTIX CORPORATION,

Debtor.

Case No.: 05-55648-MM7

BAP No.:

Chapter 7 Case

APPELLEE'S STATEMENT OF ELECTION  
TO TRANSFER APPEAL TO THE  
DISTRICT COURT  
(28 U.S.C. §158(c)(1))

COMES NOW, CONNECTIX CORPORATION, debtor-appellee, in the above-captioned matter, and files this Statement of Election to Transfer Appeal to the District Court pursuant to Bankruptcy Rule 8001(e) and Rule 8001(e)-1(a) of the rules of the United States Bankruptcy Appellate Panel of the Ninth Circuit.

This appeal is related to District Court Case No. C-06-3163 JSW.

Date: June 7, 2007

LAW OFFICES OF JAMES A. TIEMSTRA

By

JAMES A. TIEMSTRA, ESQ.  
Attorneys for Debtor-Appellee  
CONNECTIX CORPORATION

1 JAMES A. TIEMSTRA (Bar No. 96203)  
2 LAW OFFICES OF JAMES A. TIEMSTRA  
3 Tribune Tower  
4 409 Thirteenth Street, 15th Floor  
5 Oakland, CA 94612  
6 Telephone No.: (510) 987-8000  
7 Facsimile No.: (510) 987-8001  
8 E-mail: jat@tiemlaw.com

9 Attorneys for Debtor-Appellee  
10 CONNECTIX CORPORATION

11 UNITED STATES BANKRUPTCY COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION

14 In re

15 CONNECTIX CORPORATION,

16 Debtor.

Case No.: 05-55648-MM7

BAP No.: 07 3192

Chapter 7 case

PROOF OF SERVICE FOR APPELLEE'S  
STATEMENT OF ELECTION TO  
TRANSFER THE APPEAL TO THE  
DISTRICT COURT

**PROOF OF SERVICE BY MAIL**

*Connectix Corporation; Bankruptcy Case No. 05-55648-MM7*

I, Susan M. LeBlanc, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Tribune Tower, 409 Thirteenth Street, 15<sup>th</sup> Floor, Oakland, CA 94612-2605.

On June 7, 2007, I served the APPELLEE'S STATEMENT OF ELECTION TO TRANSFER APPEAL TO THE DISTRICT COURT by transmission of the Notice of Electronic Filing by the Clerk on the following CM/ECF participants:

**CHAPTER 7 TRUSTEE:**

Carol Wu  
cwu1@sbcglobal.net, ca86@ecfcbis.com

**ATTORNEYS FOR CHAPTER 7**

TRUSTEE CAROL WU:  
Reidun Stromsheim  
rstromsheim@stromsheim.com

**U.S. TRUSTEE:**

USTPRegion17.SJ.ECF@usdoj.gov

**ATTORNEYS FOR APPELLANT EOP-  
PENINSULA OFFICE PARK:**

Michael S. Greger, Esq.  
mgreger@allenmatkins.com,  
krodriguez@allenmatkins.com

and on the following party, who is not a registered CM/ECF participant, by placing a true and correct copy in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California, addressed as set forth below:

**REQUEST FOR SPECIAL NOTICE:**

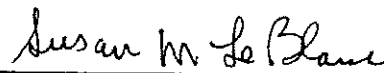
Time Warner Telecom, Inc.  
c/o Linda Boyle  
10475 Park Meadows Drive, #400  
Littleton, CO 80124

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on June 7, 2007, at Oakland, California.

  
Susan M. LeBlanc

1 MICHAEL S. GREGER (BAR NO. 156525)  
A. KENNETH HENNESAY, JR. (BAR NO. 187531)  
2 ALLEN MATKINS LECK GAMBLE & MALLORY LLP  
1900 Main Street, Fifth Floor  
3 Irvine, California 92614-7321  
Phone: (949) 553-1313  
4 Fax: (949) 553-8354  
E-Mail: mgreger@allenmatkins.com  
5 E-Mail: khennesay@allenmatkins.com

E-filing

RECEIVED  
Harold S. Marquis, Clerk  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

MAY 23 2007

FILED \_\_\_\_\_  
DOCKETED \_\_\_\_\_  
DATE INITIAL

6 Attorneys for Creditor  
EOP-PENINSULA OFFICE PARK, L.L.C.

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

3192

11 In re  
12 CONNECTIX CORPORATION,  
13 Debtor.

Case No. 05-55648-MM7

Chapter 7

**NOTICE OF APPEAL RE OPINION AND  
ORDER ON OBJECTION TO CLAIM**

Date: December 8, 2006  
Time: 11:00 a.m.  
Ctrm: 3070

RMW

18 Pursuant to 28 U.S.C. § 158(a) and Rule 8001 of the Federal Rules of Bankruptcy  
19 Procedure, creditor EOP-PENINSULA OFFICE PARK, L.L.C. ("EOP") hereby appeals from the  
20 Opinion and Order on Objection to Claim entered May 10, 2007 (the "Order") by the United  
21 States Bankruptcy Court for the San Jose Division of the Northern District of California. A true  
22 and copy of the Order is attached hereto as Exhibit "A".

23 //

24 //

25 //

26 //

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28

The names of all parties to the Order appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

<u>INTERESTED PARTY</u>	<u>COUNSEL REPRESENTING INTERESTED PARTY</u>
<u>Creditor / Appellant</u> , EOP-Peninsula Office Park, L.L.C.	Michael S. Greger, Esq. A. Kenneth Hennesay, Jr., Esq. Allen Matkins Leck Gamble Mallory & Natsis LLP 1900 Main Street, Fifth Floor Irvine, CA 92614-7321 Telephone: (949) 553-1313
<u>Debtor / Appellee</u> , Connectix Corporation	James A. Tiemstra, Esq. Law Offices of James A. Tiemstra Tribune Tower 409 Thirteenth Street, 15th Floor Oakland, CA 94612-2605 Telephone: (510) 987-8000
<u>Trustee / Appellee</u> , Carol Wu	Reidum Stromsheim, Esq. Linda Sorensen, Esq. Stromsheim and Associates 353 Sacramento Street #860 San Francisco, CA 94111 Telephone: (415) 989-4100
<u>Insiders / Appellees</u> , Bonnie Fought, Jonathan F. Garber and Roy K. McDonald	Jess B. Millikan, Esq. Bullivant Houser Bailey PC 601 California Street, Suite 1800 San Francisco, CA 94108 Telephone: (415) 352-2700  and  Richard G. Birinyi, Esq. Bullivant Houser Bailey PC 1601 5th Avenue, Suite 2300 Seattle, WA 98101-1618 Telephone: (206) 292-8930

1 If a Bankruptcy Appellate Panel Service is authorized to hear this appeal, each party  
2 has a right to have the appeal heard by the district court. The appellant may exercise this  
3 right only by filing a separate statement of election at the time of the filing of this Notice of  
4 Appeal. Appellant has not elected to have its appeal heard by the district court. Any other  
5 party may elect, within the time provided in 28 U.S.C. § 158(c) to have the appeal heard by  
6 the district court.

7  
8 Dated: May 17, 2007

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

9  
10 By: /s/ Michael S. Greger

11 MICHAEL S. GREGER  
12 Attorneys for Creditor/Appellant  
13 EOP-PENINSULA OFFICE PARK, L.L.C.  
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**PROOF OF SERVICE BY MAIL**

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss.:

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 1900 Main Street, Fifth Floor, Irvine, California 92614-7321.

On May 17, 2007, I served on interested parties in said action the within:

**NOTICE OF APPEAL RE OPINION AND ORDER ON OBJECTION TO CLAIM**

by placing a true copy thereof in sealed envelope(s) addressed as stated on the attached mailing list and causing such envelope(s) to be deposited in the U.S. Mail at Irvine, California.

I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Executed on May 17, 2007, at Irvine, California.

Kim Rodriguez  
(Type or print name)

/s/ Kim Rodriguez  
(Signature)

1 In re Connectix Corporation  
2 USBC Case No. 05-55648-MM7

3 **MAILING LIST**

4 **Debtor's Counsel**

5 James A. Tiemstra, Esq.  
6 Law Offices of James A. Tiemstra  
7 409 Thirteenth Street, 15th Floor  
Oakland, CA 94612-2605

8 **Insiders' Counsel**

9 Jess B. Millikan, Esq.  
10 Bullivant Houser Bailey PC  
601 California Street, Suite 1800  
San Francisco, CA 94108

11 Richard G. Birinyi, Esq.  
12 Bullivant Houser Bailey PC  
1601 Fifth Avenue, Suite 2300  
13 Seattle, WA 98101-1618

14 **Chapter 7 Trustee**

15 Carol Wu, Esq.  
25A Crescent Drive #413  
16 Pleasant Hill, CA 94523

17 **Chapter 7 Trustee's Counsel**

18 Reidun Stromsheim, Esq.  
19 Linda Sorensen, Esq.  
Stromsheim and Associates  
353 Sacramento Street, Suite 860  
20 San Francisco, CA 94111

**FILED**

**MAY 21 2007**

CLERK *EP*  
United States Bankruptcy Court  
San Jose, California

In re  
Connectix Corporation, a California corporation

E-filing Case no. 05-55648 -MM

Chapter 7

Debtor(s) /

**C 07 3192 RMW**

**NOTICE OF REFERRAL OF APPEAL TO BANKRUPTCY APPELLATE PANEL**

TO ALL PARTIES:

YOU AND EACH OF YOU are hereby notified that the enclosed notice of appeal has been filed by EOP-Peninsula Office Park, L.L.C. with the Clerk of the Bankruptcy Court. By virtue of the orders of the Judicial Council of the Ninth Circuit and the District Court for this district, the above appeal has been referred to the United States Bankruptcy Appellate Panel of the Ninth Circuit (BAP).

Dated: May 21, 2007

GLORIA L. FRANKLIN, Clerk  
United States Bankruptcy Court

By: *[Signature]*  
Deputy Clerk

Re: 05-55648 -MM (7)

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
CERTIFICATE OF MAILING

I, the undersigned, a regularly appointed and qualified clerk in the office of the Northern District of California, San Jose, California, hereby certify:

**NOTICE OF REFERRAL OF APPEAL TO BANKRUPTCY APPELLATE PANEL**

That I, in the performance of my duties as such Clerk, served a copy of the foregoing document by depositing it in the regular United States mail at San Jose, California on the date shown below, in a sealed envelope bearing the lawful frank of the United States Bankruptcy Court addressed as listed below.

Michael S. Greger, Esq.  
A. Kenneth Hennesay, Jr., Esq.  
Allen Matkins Leck Gamble  
Mallory & Natsis LLP  
1900 Main Street, Fifth Floor  
Irvine, CA 92614-7321

Jess B. Millikan, Esq.  
Bullivant Houser Bailey PC  
601 California Street, Suite 1800  
San Francisco, CA 94108

James A. Tiemstra, Esq.  
Law Offices of James A. Tiemstra  
Tribune Tower  
409 Thirteenth Street, 15<sup>th</sup> Floor  
Oakland, CA 94612-2605

Richard G. Birinyi, Esq.  
Bullivant Houser Bailey PC  
1601 5<sup>th</sup> Avenue, Suite 2300  
Seattle, WA 98101-1618

Reidum Stomsheim, Esq.  
Linda Sorensen, Esq.  
Stomsheim and Associates  
353 Sacramento Street #860  
San Francisco, CA 94111

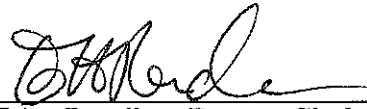
Clerk of the Bankruptcy Appellate Panel  
Attn: Edwina Clay  
125 South Grand Avenue  
Pasadena, CA 91105

Office of the U.S. Trustee/SJ  
U.S. Fedearl Bldg.  
280 S. 1<sup>st</sup> St., #268  
San Jose, CA 95113-3004

UNITED STATES BANKRUPTCY COURT  
For The Northern District Of California

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Dated: May 21, 2007

  
Erica Rendler, Deputy Clerk

May 10, 2007  
 GLORIA L. FRANKLIN, CLERK  
 U.S. BANKRUPTCY COURT  
 NORTHERN DISTRICT OF CALIFORNIA



The following constitutes  
 the order of the court. Signed May 10, 2007

*Marilyn Morgan*  
 Marilyn Morgan  
 U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF CALIFORNIA

In re:

CONNECTIX CORPORATION,

Debtor.

Case No. 05-55648 MM

Chapter 7

**OPINION AND ORDER ON  
 OBJECTION TO CLAIM**

INTRODUCTION

Carol Wu, the Chapter 7 Trustee, has objected to a claim in the amount of \$2,335,283.99 that EOP-Peninsula Office Park, the debtor's former landlord, filed against the estate of Connectix Corporation. The Trustee asserts that the correct application of § 502(b)(6) of the Bankruptcy Code limits EOP's recovery to \$446,246.99. The debtor and its three major shareholders join in the Trustee's objection. After hearing arguments of counsel and reviewing the parties' submissions, the court sustains the Trustee's objection for the reasons explained below.

FACTUAL BACKGROUND

Beginning in May 1998, Connectix leased certain business premises from EOP pursuant to a twelve-year commercial lease. Under section 4 of the lease, which is entitled "Security Deposit," Connectix had to provide EOP with a \$50,000 security deposit in the form of cash or a letter of credit.

1 Section 4 also required Connectix to deliver an additional "Letter of Credit, pursuant to the provisions  
2 contained in Section 36." Section 36, in turn, provided that the requisite letter of credit would, initially,  
3 be in the amount of \$2,111,205, subject to specified reductions beginning in year five. EOP was entitled  
4 to draw the entire amount of the additional letter of credit upon any event of default, but any amount  
5 drawn was to be held "as a security deposit, subject to the terms of Section 4." Any unused security  
6 deposit was to be returned to Connectix at the expiration or termination of the lease. Connectix  
7 maintained a certificate of deposit in an amount that matched the letter of credit at the same bank that  
8 issued the letter of credit.

9 By 2003, Connectix had fallen on hard times, and the company began to liquidate assets and  
10 wind up its affairs. In January of that year, Connectix sold substantially all of its assets to Microsoft  
11 Corporation. After the proceeds of the sale were released from escrow, the Connectix board of directors  
12 approved distributions, involving several million dollars, to its three shareholders. On September 1,  
13 2003, Connectix did not pay the September rent due under to its lease with EOP. Connectix surrendered  
14 the premises to EOP on or about September 23, 2003, and the lease was terminated. Due to the lease  
15 rejection, EOP claims to have incurred substantive damages exceeding \$14 million.

16 In January and February 2004, EOP made two draws on the standby letter of credit that  
17 Connectix had provided pursuant to section 36 of the lease. EOP applied the draws, totaling \$1,648,782,  
18 against its damage claim. Over the next year, Connectix attempted to negotiate a resolution of its  
19 dispute with EOP regarding EOP's lease rejection claim. Then, in January 2005, EOP filed a state court  
20 action based both on breach of lease and on fraudulent conveyance related to the 2003 distributions that  
21 Connectix made to its shareholders. Although the parties agreed to mediate their dispute and a mediator  
22 was selected, EOP asked for the mediation to be postponed. Shortly thereafter, Connectix filed its  
23 chapter 7 petition on September 9, 2005.

24 EOP has filed a proof of claim against the estate in the amount of \$2,335,283.99. It consists of  
25 two components. First, EOP claims \$161,588.52 in unpaid rent and other charges that became due  
26 before EOP recovered the premises in September 2003. This amount is undisputed. The vast majority  
27 of EOP's claim, however, is related to the \$2,173,695.47 that EOP asserts as its capped claim for future  
28 rent reserved under § 502(b)(6)(A) of the Bankruptcy Code.

To calculate the rent reserved portion of its claim, EOP multiplied the dollar amount of all rent that would have become due under the lease from the termination date of September 23, 2003 through the end of the lease's natural term by fifteen percent, resulting in the sum of \$2,173,695.47 for future rent. It then added that amount to the \$161,588.52 unpaid rent component to arrive at its total claim of \$2,335,283.99. EOP did not deduct for the draws on the letter of credit, asserting that the pre-petition draws only reduced its substantive damages, not the capped claim. The Trustee asserts that EOP's capped claim for rent reserved under § 502(b)(6)(A) should be determined by first calculating fifteen percent of the remaining months under the lease following surrender. Then, the future rent claim is equal to the rent that would have become due in that number of months immediately following Connectix's surrender of the premises. Those calculations produce a future rent component in the amount of \$1,933,440.47. After adding in the undisputed unpaid rent component, the total capped claim, according to the Trustee, is \$2,095,028.99. From that sum, the Trustee subtracts the draws on the letter of credit to arrive at an allowable claim of \$446,246.99.

### LEGAL DISCUSSION

#### **I. Ambiguities in § 502(b)(6) Warrant Recourse to the Legislative History to Determine Legislative Intent.**

When an objection is filed to a lessor's claim for damages resulting from the termination of a real property lease, § 502(b)(6) of the Bankruptcy Code restricts the amount of the claim that is allowable in bankruptcy. It provides that the court shall not allow the landlord's claim to the extent that the claim exceeds:

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—

- (i) the date of the filing of the petition; and
- (ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates.

11 U.S.C. § 502(b)(6). The parties, here, dispute whether the term "15 percent" in subsection (A) refers to fifteen percent of the time remaining on the lease from the date of surrender; or, fifteen percent of the total rent that would have become due after the date of surrender. They also disagree as to whether



1 EOP's post-surrender, but pre-petition, draws on the letter of credit that Connectix provided pursuant  
2 to section 36 of the lease should be deducted from EOP's allowable claim under § 502(b)(6) or whether  
3 the draws simply reduce the total amount of EOP's substantive damages.

4 That the answers to these questions are not easily ascertainable is apparent from the equal  
5 division in the authority on both issues. A number of courts have concluded that the phrase "15 percent"  
6 refers to fifteen percent of the total rent due under the remainder of the lease. *See e.g., In re New Valley*  
7 *Corp.*, 2000 WL1251858, at \*11-12 (D.N.J. 2000); *In re Andover Togs, Inc.*, 231 B.R. 521, 545-46  
8 (Bankr. S.D.N.Y. 1999); *In re Today's Woman of Florida, Inc.*, 195 B.R. 506, 507-08 (Bankr. M.D. Fla.  
9 1996); *In re Gantos, Inc.*, 176 B.R. 793, 795-96 (Bankr. W.D. Mich. 1995); *In re Financial News*  
10 *Network, Inc.*, 149 B.R. 348, 351 (Bankr. S.D.N.Y. 1993); *In re Communicall Central, Inc.*, 106 B.R.  
11 540, 544 (Bankr. N.D. Ill. 1989). This "total rent" approach is sometimes referred to as the "majority"  
12 view, but research reveals that a similar number of courts interpret the phrase as a function of the total  
13 time remaining on the lease. *See e.g., In re Blatstein*, 1997 WL 560119, at \*15-16 (E.D. Pa. 1997); *In*  
14 *re Allegheny International, Inc.*, 136 B.R. 396, 402-03 (Bankr. W.D. Pa. 1991), *aff'd*, 145 B.R. 823,  
15 827-28 (W.D. Pa. 1992); *In re Ace Electrical Acquisition, LLC*, 342 B.R. 831, 833 (Bankr. M.D. Fla.  
16 2005); *In re Peters*, 2004 WL 1291125, at \*6, n.20 (Bankr. E.D. Pa. 2004); *In re Iron-Oak Supply Corp.*,  
17 169 B.R. 414, 419-20 (Bankr. E.D. Cal. 1994); *In re Bob's Sea Ray Boats, Inc.*, 143 B.R. 229, 231  
18 (Bankr. D.N.D. 1992). The commentators are also divided. *Compare* Norton Bankruptcy Law and  
19 Practice 2d, vol. 2, § 41.24 (2006)(adopting the rent approach without discussion) *with* 4 Collier on  
20 Bankruptcy (15<sup>th</sup> rev. ed.) at ¶ 502.03[7][c] (noting that § 502(b)(6) speaks in terms of time and that the  
21 apparent "majority's" use of the rent approach is not in accord with the language of the statute). With  
22 respect to the correct application of the letter of credit, the text of § 502(b)(6) is silent on how to apply  
23 payments from pre-petition draws against a letter of credit that is serving as a security deposit for a  
24 lease. Research discloses that only two reported decisions have considered pre-petition draws on a letter  
25 of credit, and the decisions reached contrary results. *Compare In re PPI Enterprises, Inc.*, 324 F.3d 197,  
26 208 (3<sup>rd</sup> Cir. 2003)(letter of credit draw following tenant's premature termination of lease), *with In re*  
27 *Condor Systems, Inc.*, 296 B.R. 5, 13-15 (9<sup>th</sup> Cir. B.A.P. 2003)(letter of credit draw following  
28 employer's premature termination of employment contract).

1 The even split in authority strongly indicates that the text of § 502(b)(6) is less than plain with  
 2 respect to either of the issues before this court. When statutory ambiguity exists, the legislative intent  
 3 and history behind the statute may be consulted. *Toibb v. Radloff*, 501 U.S. 157, 162, 111 S. Ct. 2197,  
 4 2200 (1991); *Blum v. Stenson*, 465 U.S. 886, 896, 104 S. Ct. 1541, 1548 (1984); *United States v. Lopez*,  
 5 \_\_ F.3d \_\_, 2007 WL 1309689, at \*16 (2007); *Consejo de Desarrollo Economico de Mexicali, A.C. v.*  
 6 *United States*, 482 F.3d 1157(9<sup>th</sup> Cir. 2007). Unlike more recent amendments to the Bankruptcy Code,  
 7 a wealth of legislative history from 1977 and 1978 provides context and explains Congressional  
 8 motivations behind § 502(b)(6) and its predecessors.

9 Prior to 1934, a landlord's claim for future rent damages due to premature lease termination was  
 10 not recognized in bankruptcy because it was considered contingent and not capable of proof. See  
 11 *Oldden v. Tonto Realty Corp.*, 143 F.2d 916, 918 (2d Cir. 1944)(collecting cases). *Oldden* was one of  
 12 few decisions interpreting the cap on lease rejection damages that was added to the Bankruptcy Act of  
 13 1898. As explained in *Oldden*, Congress used the 1934 and 1938 amendments to the Bankruptcy Act  
 14 to overcome obstacles that had previously prevented landlords from proving claims for future rent. At  
 15 the same time, it placed a ceiling on the measure of a landlord's damages to avoid large and  
 16 overwhelming claims for unearned rent. *Id.* at 920. The result represented a compromise that enabled  
 17 landlords to assert some amount as a claim for future rent, but with limited sacrifice on the part of  
 18 general creditors. *Id.* Following the 1938 amendments, the Bankruptcy Act provided that, in liquidation  
 19 cases, a landlord's claim would not be allowed in excess of "the year next succeeding" the date of  
 20 surrender or reentry, which ever occurred first, regardless of whether that date was before or after the  
 21 petition date. See 4 Collier on Bankruptcy at ¶502.LH[3][a]. In rehabilitation cases, the amendments  
 22 limited claims to "the three years next succeeding" surrender or reentry. *Id.*

23 When Congress drafted the 1978 Bankruptcy Code, it carried forward the limitations on  
 24 landlords' claims for lease rejection damages from the Bankruptcy Act. The Report of the House  
 25 Judiciary Committee on the original version of H.R. 8200 specifically referenced *Oldden's* detailed  
 26 review of the history of the limitation on landlord claims, and then went on to explain that the cap on  
 27 landlords' damages was "designed to compensate the landlord for his loss while not permitting a claim  
 28 so large . . . as to prevent other general unsecured creditors from recovering a dividend from the estates.

1 The damages a landlord may assert from termination of a lease are limited to the rent reserved for the  
 2 greater of one year or 10% of the remaining lease term, not to exceed three years after the earlier of'  
 3 the petition date or the date of surrender or repossession. H.R. Rep. No. 595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 353  
 4 (1977), *reprinted in* Collier on Bankruptcy, vol. C, App. Pt. 4(d)(i). The House Judiciary Report also  
 5 noted that the new ten percent formula replaced the Act's dual provisions allowing recovery of three  
 6 years' rent in reorganization cases and one year in liquidation cases. The House Judiciary Report further  
 7 observed that the provision capping landlords' lease rejection damages did not

8 overrule *Odden*, or the proposition for which it has been read to stand: to the extent that  
 9 a landlord has a security deposit in excess of the amount of his claim allowed under this  
 10 paragraph, the excess comes into the estate. . . . As under *Odden*, he will not be  
 11 permitted to offset his actual damages against his security deposit and then claim for the  
 12 balance under this paragraph. Rather, his security deposit will be applied in satisfaction  
 13 of the claim that is allowed under this paragraph.

14 *Id.* These comments accompanied H.R. 8200 when it went to the Senate for consideration.

15 The Senate's amended version of the 1978 bankruptcy bill, for the most part, accepted the  
 16 House's version of the limitation on landlords' lease rejection damages, but it retained the Bankruptcy  
 17 Act's one year/three year distinction between liquidation and rehabilitation cases. S. Rep. No. 989, 95<sup>th</sup>  
 18 Conf., 2d Sess. 63 (1978), *reprinted in* Collier on Bankruptcy, vol. D, App. Pt. 4(e)(i). Eventually, a  
 19 compromise was reached. Introducing the compromise bill, Congressman Don Edwards noted that the  
 20 modified version of H.R. 8200 contained the House's original cap on landlords' lease rejection damages  
 21 but increased the percentage calculation from ten to fifteen percent. Explaining the decision to retain  
 22 the Bankruptcy Act's limit on landlord's damages, Congressman Edwards commented that, historically,  
 23 it was "considered equitable to limit the claims of real estate lessor[s]." 124 Cong. Rec. H11,094 (daily  
 24 ed. Sept. 28 1978), *reprinted in*, Colliers, Vol. D, at App. Pt. 4(f)(i)(comments of Congressman  
 25 Edwards). He observed that two considerations led to that belief. First, as a matter of history, damages  
 26 upon breach of a real estate lease were viewed as contingent and difficult to prove. Second, in leasing  
 27 transactions, "the lessor retains all risks and benefits as to the value of the real estate at the termination  
 28 of the lease." *Id.* In other words, the lessor re-takes full possession of the property once the lease is  
 terminated. Both the House and the Senate enacted H.R. 8200 as modified and it appears today as  
 § 502(b)(6) of the Bankruptcy Code.

1  
2 **II. Under § 502(b)(6)(A), the Amount of the Landlord's Capped Claim is Calculated Using the**  
3 **Next Succeeding 15% of the Time Remaining through the Natural End of the Lease.**

4 Based on the language and the legislative history of § 502(b)(6), it is apparent that the fifteen  
5 percent calculation is a function of time, not the remaining rent due under the lease. This conclusion  
6 is in keeping with the most ordinary reading of the statute. Absent the qualifier setting a maximum  
7 term, the statute states that the court must look to fifteen percent of "the remaining term of such lease."  
8 Common use of the phrase "the term of a lease," refers to the length of a lease based on a measure of  
9 time, not an amount of rent. Thus, the statutory directive to calculate fifteen percent of the remaining  
10 term most naturally requires a calculation of time. Other references to time in § 502(b)(6)(A) bolster  
11 this temporal interpretation. First, the section instructs that the fifteen percent calculation must be based  
12 on the remaining term that *follows*, or comes after, the earlier of two dates. Additionally, the section  
13 sets both a minimum and a maximum period of *time* for which a claim of future rent will be allowed.  
14 At a minimum, a landlord will be allowed a claim for the rent that would have come due during the first  
15 year following the applicable trigger date, and, at a maximum, the rent that would have come due during  
16 the three years immediately following the applicable trigger date. Finally, the statutory mandate to  
17 compute rent reserved "without acceleration" further confirms that fifteen percent calculation is a  
18 function of time. If rent reserved were computed based on rent that would have come due under the  
19 remainder of the lease, then the calculation necessarily would "accelerate" and take into account future  
20 rent increases that had not yet occurred.

21 The legislative history also indicates that the fifteen percent calculation is an operation of time.  
22 As noted above, the percentage calculation was intended to replace the dual time provisions employed  
23 in the Bankruptcy Act. There is no indication, however, that Congress intended to move away from  
24 calculating the cap based on the rent that would become due within a time period immediately  
25 succeeding the statutory trigger date. Because there is no clear expression of an intent to change from  
26 a time approach to a "total rent" based formula, it cannot be presumed that Congress intended to make  
27 that shift. *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 227, 77 S. Ct. 787, 791  
28 (1957) ("no changes in law or policy are to be presumed from changes of language in the revision unless

1 an intent to make such changes is clearly expressed.”). Further, the House Judiciary Report explaining  
 2 the then ten percent calculation confirms that it is a computation of time. It stated that “[t]he damages  
 3 a landlord may assert from termination of a lease are limited to the rent reserved for the greater of one  
 4 year or 10% of the remaining lease term, not to exceed three years after the earlier of” the petition date  
 5 or the date of surrender or repossession. H.R. Rep. No. 595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 353 (1977), *reprinted*  
 6 *in Collier on Bankruptcy* (15<sup>th</sup> Rev. Ed. ), vol. C, App. Pt. 4(d)(i) (emphasis added).

7 The time approach also better serves the economic forces that Congress was trying to address  
 8 when it enacted the landlord damage cap. Some courts have reasoned that the rent approach more  
 9 closely approximates a landlord’s expectation damages by allowing the landlord to take advantage of  
 10 bargained for rent increases. *See e.g., Gantos*, 176 B.R. at 795-96. However, neither the statute nor  
 11 the legislative history suggest that Congress intended to approximate landlords’ expectation damages.  
 12 To the contrary, the statute speaks in terms of rent due, “without acceleration.” Further, Congressman  
 13 Edwards specifically identified the economic considerations that led to the enactment of § 502(b)(6).  
 14 Although Congress wanted to continue the Bankruptcy Act’s decision to give landlords some claim for  
 15 future rent in bankruptcy, it also recognized the historical belief that it was equitable to limit the claims  
 16 of landlords. The legislative history indicates that Congress started from the premise that, historically,  
 17 landlords had no claim at all. It was also influenced by the fact that landlords, unlike other general  
 18 unsecured creditors, have added protection at the termination of a lease arrangement. Landlords get the  
 19 property back. As one court concluded, § 502(b)(6) provides landlords with a certain period of time to  
 20 relet their property. If successful, the landlord suffers no real economic detriment, because reletting the  
 21 premises restores the landlord to the position it was in prior to lease termination. *See In re Allegheny*  
 22 *International, Inc.* 136 B.R. at 402, *aff’d*, 145 B.R. 823 (W.D. Pa. 1992).

23 Because the parties agree that Connectix surrendered the leased premises on or about September  
 24 23, 2003, nearly two years prior to the petition date, the surrender date is the operative date for  
 25 determining the amount of EOP’s allowable claim under § 502(b)(6). For the reasons explained, EOP’s  
 26 allowable claim for future rent is equal to the rent that would have become due during fifteen percent  
 27 of the months remaining under the lease immediately following surrender. The resulting number must  
 28 then be added to EOP’s claim for past due rent under § 502(b)(6)(B). According to the Trustee’s



1 calculations, which are based on the time approach and are not disputed mathematically, this results in  
2 a claim for future rent of \$1,933,440.47. After adding in the undisputed amount of \$161,588.52  
3 attributable to unpaid past due rent, EOP's total capped claim under § 502(b)(6) is \$2,095,028.99. The  
4 remaining question is whether the \$1,648,782 that EOP has already received from draws on the letter  
5 of credit should further reduce that claim.

6  
7 **III. Under § 502(b)(6), Pre-petition Draws on a Letter of Credit Serving as a Security Deposit**  
8 **Will Reduce the Landlord's Allowable Claim in Bankruptcy.**

9 As the Ninth Circuit has recognized, § 502(b)(6) provides no explicit guidance as to whether  
10 security deposit proceeds should be applied to a landlord's gross damages or its allowed claim and,  
11 therefore, the statute is ambiguous. *In re AB Liquidating Corp. (AMB Property, L.P. v. Official*  
12 *Creditors Comm.)*, 416 F.3d 961, 964 (9<sup>th</sup> Cir. 2005). As a result, the court looked to the legislative  
13 history and its "explicit endorsement of *Oldden*" for assistance. *Id.* The House Judiciary Report on  
14 H.R. 8200 expressly refers to the *Oldden* case, a case under the Bankruptcy Act that concludes that  
15 security deposits should be applied against the landlord's capped claim rather than its total damages.  
16 *Oldden*, 143 F.2d at 920-21. The House Judiciary Report states that the proposed cap on a landlord's  
17 lease rejection damages was not intended to overrule or change the outcome of *Oldden*. It explained  
18 that "under *Oldden*, [a landlord] will not be permitted to offset his actual damages against his security  
19 deposit and then claim for the balance under [§ 502(b)(6)]. Rather, his security deposit will be applied  
20 in satisfaction of the claim that is allowed under [§ 502(b)(6)]." In light of this congressional  
21 endorsement, the Ninth Circuit refused to reject *Oldden*'s holding and concluded that under the facts  
22 before it, namely, post-petition draws on a letter of credit security deposit, the letter of credit proceeds  
23 received by the landlord were properly subtracted from the landlord's allowed claim. *AB Liquidating*,  
24 416 F.3d at 965. Relying on that same legislative history, the Third Circuit has held that proceeds  
25 received from post-surrender but pre-petition draws on a letter of credit security deposit also reduce a  
26 landlord's allowed claim. *In re PPI Enterprises (U.S.), Inc. (Solow v. PPI Enterprises (U.S.), Inc.)*, 324  
27 F.3d 197 (3d Cir. 2003). In *PPI*, as in the instant case, the debtor surrendered its lease several years  
28 prior to the date of its bankruptcy petition. In the interim, PPI's landlord, like EOP here, drew down

1 the letter of credit that PPI had provided as a security deposit. The Third Circuit reasoned that under  
2 § 502(b)(6), the amount of the landlord's allowable claim must be calculated as of the date the lease was  
3 surrendered. Therefore, any proceeds received following surrender should be applied against the capped  
4 claim. I agree with the Third Circuit and conclude that, under the facts of this case, EOP's post-  
5 surrender, but pre-petition draws on the letter of credit security deposit provided by Connectix are to  
6 be applied against EOP's allowable claim in bankruptcy.

7 EOP's reliance on *In re Condor Systems, Inc.*, 296 B.R. 5 (9<sup>th</sup> Cir. B.A.P.), does not persuade  
8 me otherwise. In *Condor*, the Bankruptcy Appellate Panel for the Ninth Circuit considered whether  
9 pre-petition severance payments reduce the one-year cap on claims by terminated employees set forth  
10 in § 502(b)(7), and further whether a stream of pre- and post- petition severance payments under a letter  
11 of credit reduce that same cap. *Condor*, 296 B.R. at 10. Because the appellate panel answered "no" to  
12 both questions, some might try to extend *Condor*'s holding to find that pre-petition draws on letter of  
13 credit security deposits under § 502(b)(6) should not be applied against the allowed amount of a  
14 landlord's claim. But the court in *Condor* discouraged any such extension of its reasoning. In  
15 considering the letter of credit issue, the appellate panel noted the similarity in the language between  
16 § 502(b)(6) and § 502(b)(7), but took care to explain that letters of credit serving as security deposits  
17 on real property leases are unique creatures with an extensive history that differentiates them from  
18 letters of credit established to secure payment of employment termination damages. *Id.* at 18-19. In  
19 light of that distinction, the court concluded that the treatment of security deposits under § 502(b)(6)  
20 simply did not apply to the employment termination case before it. *Id.*

21 Others might try to extend *Condor*'s discussion of the word "unpaid" in § 502(b)(7) to  
22 § 502(b)(6) security deposit cases. In *Condor*, the court reasoned that certain pre-petition severance  
23 payments did not apply against an employee's capped claim based on the appearance of the word  
24 "unpaid" in § 502(b)(7)(B), but not in § 502(b)(7)(A). I do not find *Condor*'s reasoning persuasive in  
25 the case before me. It is true that the word "unpaid" appears in § 502(b)(6)(B), which deals with unpaid  
26 past due rent, but does not appear in § 502(b)(6)(A), which controls the calculation of future rent  
27 reserved. However, in the § 502(b)(6) context, future rent reserved is, by definition, unpaid at the time  
28

1 of the calculation of the cap. There simply was no need for Congress to include the word "unpaid" in  
2 § 502(b)(6)(A).

3 In fact, *Condor*'s discussion of security deposit letters of credit reinforces the conclusion that  
4 EOP's post-surrender, but pre-petition draws on the letter of credit security deposit provided by  
5 Connectix are to be applied against EOP's allowable claim in bankruptcy. According to *Condor*, when  
6 a letter of credit secures payment of a real property lease, the key question is whether it is intended to  
7 be a security deposit such that any draw against the letter of credit will have an impact on property of  
8 the estate. *Id.* at 19. *Accord In re Mayan Networks Corp.*, 306 B.R. 295, 306 (9<sup>th</sup> Cir. B.A.P.  
9 2004)(Klein, J., concurring). Here, the letter of credit at issue was clearly intended to be a security  
10 deposit. The lease first mentions the letter of credit in a paragraph entitled "Security Deposit." Further,  
11 the lease explicitly states that any draws on the letter of credit are to be treated as additional security  
12 deposit. Finally, counsel for Connectix verified at the hearing that Connectix had established a  
13 certificate of deposit in the same amount as the letter of credit at the same bank that issued the letter of  
14 credit. Under similar facts, both the appellate panel and the Ninth Circuit have concluded that a letter  
15 of credit was intended to be and should be treated as a security deposit because draws against the letter  
16 of credit would have an effect on property in the debtor's estate. *See AB Liquidating*, 416 F.3d at 965;  
17 and, *Mayan Networks*, 306 B.R. at 301.

18 For the reasons explained, the \$1,648,782 that EOP took in pre-petition draws on the letter of  
19 credit security deposit from Connectix is to be applied against its capped claim of \$2,095,028.99,  
20 leaving an allowable claim of \$446,246.99.

### 21 22 CONCLUSION

23 The Chapter 7 Trustee's objection to the claim of EOP-Peninsula Office Park is sustained and  
24 EOP-Peninsula Office Park's claim is allowed in the reduced amount of \$446,246.99.

25  
26 Good cause appearing, IT IS SO ORDERED.

27  
28 \* \* \* \* END OF ORDER \* \* \* \*



1 Case No. 05-55648

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COURT SERVICE LIST

5

Reidun Stromsheim  
Linda Sorensen  
STROMSHEIM & ASSOCIATES  
353 Sacramento Street, Suite 860  
San Francisco, CA 94111

Michael S. Greger  
A. Kenneth Hennesay, Jr.  
ALLEN MATKINS LECK GAMBLE &  
MALLORY LLP  
1900 Main Street, 5<sup>th</sup> Floor  
Irvine, CA 92614-7321

8

9

Richard G. Birinyi  
BULLIVANT HOUSER BAILEY  
1601 5<sup>th</sup> Avenue, Suite 2300  
Seattle, WA 98101 -1618

Jess B. Millikan  
BULLIVANT HOUSER BAILEY  
601 California Street, Suite 1800  
San Francisco, CA 94108

10

11

James A. Tiemstra  
LAW OFFICES OF JAMES A. TIEMSTRA  
409 Thirteenth Street, 15<sup>th</sup> Floor  
Oakland, CA 94612-2605

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PreAct, APPEAL

**U.S. Bankruptcy Court**  
**Northern District of California (San Jose)**  
**Bankruptcy Petition #: 05-55648**  
**Internal Use Only**

Assigned to: Judge Marilyn Morgan

E-filing

Date Filed: 09/09/2005

Chapter 7

Voluntary

Asset

**C 07 3192 RMW****Debtor****Connectix Corporation, a California corporation**

2680 Bayshore Pkwy. #210

Mountain View, CA 94043

Tax id: 94-30172

represented by **James A. Tiemstra**Law Offices of James A.  
Tiemstra

Tribune Tower

409 13th St. 15th Fl

Oakland, CA 94612

(510)987-8000

Email: jat@tiemlaw.com

**Trustee****Carol Wu**

25A Crescent Dr. #413

Pleasant Hill, CA 94523

408-404-7039

represented by **Carol Wu**

25A Crescent Dr. #413

Pleasant Hill, CA 94523

408-404-7039

Email: cwu1@sbcglobal.net

**Elizabeth Murphy**Law Offices of Stromsheim  
and Assoc.

201 California St. #350

San Francisco, CA 94111

(415) 989-4100

Email:

emurphy@stromsheim.com

**Reidun Stromsheim**

Law Offices of Stromsheim  
and Assoc.

201 California St. #350

San Francisco, CA 94111

(415)989-4100

Email:

rstromsheim@stromsheim.com

**U.S. Trustee**




**Office of the U.S. Trustee / SJ**

U.S. Federal Bldg.

280 S 1st St. #268

San Jose, CA 95113-3004

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Filing Date	#	Docket Text
09/09/2005	 <u>1</u>	Chapter 7 Voluntary Petition, Fee Amount \$209, Filed by Connectix Corporation. Order Meeting of Creditors due by 9/16/2005. (Tiemstra, James) ERROR: INCOMPLETE FILING DEADLINES WERE NOT SET. COURT CORRECTED TO GIVE 15 DAY DEADLINE. Modified on 9/12/2005 (mk, ). (Entered: 09/09/2005)
09/09/2005		Receipt of filing fee for Voluntary Petition (Chapter 7)(05-55648) [misc,volp7] ( 209.00). Receipt number 2548426, amount \$ 209.00 (U.S. Treasury) (Entered: 09/09/2005)
09/09/2005		First Meeting of Creditors with 341(a) meeting to be held on 10/04/2005 at 12:00 PM at San Jose Room 130. Proof of Claim due by 01/02/2006. (Tiemstra, James) (Entered: 09/09/2005)
09/09/2005	 <u>2</u>	Creditor Matrix <i>Cover Sheet</i> Filed by Debtor Connectix Corporation (Attachments: # <u>1</u> Exhibit

		Creditor Mailing Matrix) (Tiemstra, James) (Entered: 09/09/2005)
09/09/2005	● <u>3</u>	Disclosure of Compensation of Attorney for Debtor in the Amount of \$ 25,000 <i>per Rule 2016(b)</i> Filed by Debtor Connectix Corporation (Tiemstra, James) (Entered: 09/09/2005)
09/12/2005	● <u>4</u>	Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, and Deadlines (Generated) . (mk, ) (Entered: 09/12/2005)
09/12/2005	●	Deadlines Updated (RE: related document(s) <u>1</u> Voluntary Petition (Chapter 7)). Incomplete Filings due by 9/27/2005. (mk, ) (Entered: 09/12/2005)
09/12/2005	●	<b>**CORRECTIVE ENTRY**</b> (RE: related document(s) <u>1</u> Voluntary Petition (Chapter 7), Voluntary Petition (Chapter 7)). (mk, ) ERROR: INCOMPLETE FILING DEADLINES WERE NOT SET. COURT CORRECTED TO GIVE 15 DAY DEADLINE. (Entered: 09/12/2005)
09/14/2005	● <u>5</u>	BNC Certificate of Mailing - Meeting of Creditors. (RE: related document(s) <u>4</u> Generate 341 Notices). Service Date 09/14/2005. (Admin.) (Entered: 09/14/2005)
09/15/2005	● <u>6</u>	Application to Employ Kokjer, Pierotti, Maiocco & Duck LLP as Accountant Filed by Trustee Carol Wu (Attachments: # <u>1</u> Declaration of Proposed Principal Accountant) (Wu, Carol) (Entered: 09/15/2005)
09/15/2005	● <u>7</u>	Application to Employ Stromsheim & Associates as Counsel <i>by Trustee</i> Filed by Trustee Carol Wu (Attachments: # <u>1</u> Certificate of Service)

		Miscellaneous Relief, ). Filed by Witnesses Bonnie Fought, Jonathan F. Garber, Roy K. McDonald (Blanscett, Joye) (Entered: 02/23/2007)
02/23/2007	● <u>141</u>	Brief/Memorandum in Opposition to <i>Motion for Order Authorizing EOP-Peninsula Office Park, L.L.C. to File and Prosecute Avoidance Actions and Related Claims on Behalf of the Chapter 7 Bankruptcy Estate and Related Relief</i> (RE: related document(s) <u>131</u> Motion Miscellaneous Relief, ). Filed by Debtor Connectix Corporation (Attachments: # <u>1</u> Declaration of James A. Tiemstra# <u>2</u> Request for Judicial Notice# <u>3</u> Exhibit 1# <u>4</u> Exhibit 2# <u>5</u> Exhibit 3# <u>6</u> Exhibit 4# <u>7</u> Exhibit 5# <u>8</u> Exhibit 6# <u>9</u> Certificate of Service) (Tiemstra, James) (Entered: 02/23/2007)
03/01/2007	● <u>142</u>	Adversary case 07-05032. 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)) Complaint by EOP-Peninsula Office Park, LLC against Roy K. McDonald, Jonathan F. Garber, Bonnie Fought, Alan Mendelson, Frank Levinson. Fee Amount \$250. (Attachments: # <u>1</u> AP Cover Sheet # <u>2</u> Summons to be Issued) (Greger, Michael) (Entered: 03/01/2007)
03/02/2007	●	Hearing Continued (RE: related document(s) <u>131</u> Motion for Order Authorizing EOP-Peninsula Office Park, L.L.C. to File and Prosecute Avoidance Actions and Related Claims on Behalf of the Chapter 7 Bankruptcy Estate and Related Relief Filed by Creditor EOP-Peninsula Office Park, LLC (Greger, Michael)). Hearing to be held on 5/11/2007 at 11:00 AM SanJose Courtroom 3070 - Morgan for <u>131</u> . Continued prior to hearing. (mem, ) (Entered: 03/09/2007)

05/04/2007	● <u>143</u>	Reply to <i>In Support of Motion for Order Authorizing EOP-Peninsula Office Park, L.L.C. to File and Prosecute Avoidance Actions and Related Claims on Behalf of the Chapter 7 Bankruptcy Estate and Related Relief (including Proof of Service)</i> (RE: related document(s) <u>131</u> Motion Miscellaneous Relief, ). Filed by Creditor EOP-Peninsula Office Park, LLC (Greger, Michael) (Entered: 05/04/2007)
05/10/2007	● <u>144</u>	Opinion and Order (RE: related document(s) <u>79</u> Objection to Claim filed by Trustee Carol Wu). (er, ) (Entered: 05/10/2007)
05/12/2007	● <u>145</u>	BNC Certificate of Mailing (RE: related document(s) <u>144</u> Order). Service Date 05/12/2007. (Admin.) (Entered: 05/12/2007)
05/17/2007	● <u>146</u>	Notice of Appeal to BAP <i>Re Opinion and Order on Objection to Claim</i> , Fee Amount \$ 255. (RE: related document(s) <u>144</u> Order). Appellant Designation due by 5/29/2007. Transmission to BAP due by 5/21/2007. (Attachments: # <u>1</u> Exhibit A) Filed by Creditor EOP-Peninsula Office Park, LLC (Greger, Michael) (Entered: 05/17/2007)
05/17/2007		Receipt of filing fee for Notice of Appeal(05-55648) [appeal,ntcapl] ( 255.00). Receipt number 4266816, amount \$ 255.00 (U.S. Treasury) (Entered: 05/17/2007)